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7

8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,

CASE NO. 21-CR-110-DAD

12 Plaintiff,

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER

13 v.  
14 JULIO MENDOZA MADRIGAL,  
15 DORIAN MICHAEL WILLES, and  
HEATHER ROMOSER,

CURRENT DATE: December 13, 2022  
PROPOSED DATE: April 4, 2023  
COURT: Hon. Dale A. Drozd

16 Defendants.

17  
18 BACKGROUND

19 This case is set for status conference on December 13, 2022. On May 26, 2021, this Court issued  
20 General Order 631, which reopened the courthouses in this District, but which left it to “each Judge [to]  
21 determine whether to hold proceedings . . . in person or by telephone or videoconference.” The order  
22 further authorized each Judge to “exercise his or her authority to continue [criminal] matters” and  
23 “exclud[e] time under the Speedy Trial Act.” This and previous General Orders were entered to address  
24 public health concerns related to COVID-19.

25 Although the General Orders address the district-wide health concern, the Supreme Court has  
26 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
27 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
28 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no

1 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 2 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 3 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 4 or in writing”).

5 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 6 and inexcusable—General Orders 611, 612, 617, 618, and other orders require specific supplementation.  
 7 Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of  
 8 his findings that the ends of justice served by taking such action outweigh the best interest of the public  
 9 and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is  
 10 excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or  
 11 finding that the ends of justice served by the granting of such continuance outweigh the best interests of  
 12 the public and the defendant in a speedy trial.” *Id.*

13 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 14 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 15 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 16 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 17 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 18 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
 19 *also United States v. Correa*, 182 F. Supp. 2d 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 20 following the September 11, 2001 terrorist attacks and the resultant public emergency).

21 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 22 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 23 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
 24 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, 21 F.4th 1036, 1046  
 25 (9th Cir. 2022). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2)  
 26 how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since  
 27 the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly  
 28 susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant

1 faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason  
2 to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district  
3 court has the ability to safely conduct a trial. *Id.*

4 In light of the foregoing, this Court should consider the following case-specific facts in finding  
5 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
6 (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date for the status conference.  
7 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
8 “specifically limited in time”).

9 **STIPULATION**

10 Plaintiff United States of America, by and through its counsel of record, and defendant JULIO  
11 MENDOZA MADRIGAL, by and through his counsel of record, Todd Leras, DORIAN MICHAEL  
12 WILLES, by and through his counsel of record, Christopher Cosca, and HEATHER ROMOSER, by and  
13 through her counsel of record, Toni White,<sup>2</sup> hereby stipulate as follows:

14 1. By previous order, this matter was set for status conference on December 13, 2022.

15 2. By this stipulation, defendants now move to continue the status conference until April 4,  
16 2023, and to exclude time between December 13, 2022, and April 4, 2023, under 18 U.S.C.  
17 § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4].

18 3. The parties agree and stipulate, and request that the Court find the following:

19 a) The government has produced over 100,000 pages of discovery and voluminous  
20 audio and audio/video discovery, including interceptions over multiple wiretapped telephones as  
21 well as recordings of controlled purchases of narcotics. Many of the recordings are in Spanish.

22 b) Counsel for defendants desire additional time to consult with their clients, review  
23 the current charges, conduct investigations and research related to the charges, review discovery,  
24 discuss potential resolutions, prepare pretrial motions, and otherwise prepare for trial.

25 \_\_\_\_\_  
26 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
27 Cal. March 18, 2020).

28 <sup>2</sup> Defendants JUAN ZAMORA TORRES and ROBERT LEWIS McCOMMAS have been  
sentenced in this matter. Doc. 126, 148. Consequently, neither defendant TORRES nor defendant  
McCOMMAS join in this stipulation.

1           c)     Additionally, given the voluminous discovery and the fact that this case involved  
2 a multi-line wiretap investigation, it is so complex that it is unreasonable to expect adequate  
3 preparation for pretrial proceedings or for the trial itself prior to April 4, 2023.

4           d)     Senior United States District Judge John A Mendez granted the request of  
5 Attorney Todd Leras to substitute into this case to represent Julio Mendoza Madrigal (Mr.  
6 Mendoza) as appointed counsel in place of retained counsel Preciliano Martinez on March 1,  
7 2022.

8           e)     Mr. Mendoza's primary language is Spanish. Although he speaks some English,  
9 Mr. Mendoza generally requires the assistance of a Spanish language interpreter in court and  
10 during meetings with defense counsel to review discovery and discuss substantive legal matters.

11          f)     Since September 2022, Mr. Mendoza has been held in pre-trial detention at the  
12 Wayne Brown Correctional Facility (WBCF) in Nevada City. WBCF is approximately sixty-  
13 five miles from defense counsel's office in downtown Sacramento. WBCF does not provide a  
14 videoconferencing option for attorney-client meetings. All meetings to review discovery and  
15 defense investigation with Mr. Mendoza therefore require in-person meetings and travel to  
16 WBCF.

17          g)     Counsel for defendants believe that failure to grant the above-requested  
18 continuance would deny them the reasonable time necessary for effective preparation, taking into  
19 account the exercise of due diligence.

20          h)     No defendant has invoked his/her speedy trial rights since the inception of the  
21 case.

22          i)     The government does not object to the continuance.

23          j)     Based on the above-stated findings, the ends of justice served by continuing the  
24 case as requested outweigh the interest of the public and the defendants in a trial within the  
25 original date prescribed by the Speedy Trial Act.

26          k)     For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
27 et seq., within which trial must commence, the time period of December 13, 2022, to April 4,  
28 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local

1 Codes T2 and T4] because it results from a continuance granted by the Court at defendants'  
2 request on the basis of the Court's finding that the ends of justice served by taking such action  
3 outweigh the best interest of the public and the defendants in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
5 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
6 must commence.

7 IT IS SO STIPULATED.

8 Dated: December 5, 2022

PHILLIP A. TALBERT  
United States Attorney

10 /s/ ANGELA L. SCOTT  
11 ANGELA L. SCOTT  
12 Assistant United States Attorney

13 Dated: December 5, 2022

14 /s/ TODD LERAS per email  
15 authorization  
16 TODD LERAS  
Counsel for Defendant  
JULIO MEDOZA MADRIGAL

17 Dated: December 5, 2022

18 /s/ CHRISTOPHER COSCA per  
19 email authorization  
20 CHRISTOPHER COSCA  
Counsel for Defendant  
DORIAN MICHAEL WILLES

21 Dated: December 5, 2022

22 /s/ TONI WHITE per email  
23 authorization  
24 TONI WHITE  
Counsel for Defendant  
HEATHER LEIGH ROMOSER

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## ORDER

Pursuant to the stipulation of the parties, the status conference currently scheduled for December 13, 2022 is continued to April 4, 2023 at 9:30 a.m. and time is excluded between December 13, 2022, and April 4, 2023, under 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4]. No further continuances of the status conference in this action will be granted absent a compelling showing of good cause.

IT IS SO ORDERED.

Dated: **December 5, 2022**

Dale A. Droyd  
UNITED STATES DISTRICT JUDGE